

**Christine Cusack**

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**From:** Jeff Asperger  
**Sent:** Thursday, March 31, 2005 3:20 PM  
**To:** 'Whitman, M. Hamilton Jr.'; 'Robert G. Clyne'; Jeff Asperger; Christine Cusack; 'wcbailey@simssshowers.com'; 'bbrunk@gulfattorneys.com'; 'jbartlett@semmes.com'; 'bcole@semmes.com'; 'agiles@semmes.com'; 'FJGorman@GandWlaw.com'; 'James A. Saville'; 'berniesevel@aol.com'; 'jskeen@skaufflaw.com'; 'clyon@semmes.com'  
**Cc:** Kelly Saindon  
**Subject:** RE: Tate & Lyle remaining discovery

Gentlemen:

The magistrate has allowed the reopening of discovery on the issue of the wire rope. Therefore, it is my reasonable interpretation that any discovery which may bear on that issue will be germane to the pending motions, and determination of the motions cannot go forward until the discovery is complete. Since we cannot agree, I will so advise the magistrate. Thank you.

Jeff

-----Original Message-----

From: Whitman, M. Hamilton Jr. [mailto:mhwhitman@ober.com]  
Sent: Thursday, March 31, 2005 2:15 PM  
To: Robert G. Clyne; Jeff Asperger; Christine Cusack; wcbailey@simssshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; James A. Saville; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com  
Subject: RE: Tate & Lyle remaining discovery

As indicated before, I'm with Bob on this.

Tony

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-----Original Message-----

From: Robert G. Clyne [mailto:RClyne@hillrivkins.com]  
Sent: Thursday, March 31, 2005 2:24 PM  
To: Jeff Asperger; Whitman, M. Hamilton Jr.; Christine Cusack; wcbailey@simssshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; James A. Saville; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com  
Subject: RE: Tate & Lyle remaining discovery

How can a rebuttal witness be germane to a summary judgment motion? At best H. Popp can testify about events AFTER the casualty. If you want to take the deposition of Balita de bene esse, then I will go along with it as a compromise. However, none of this has any bearing on the condition of the wire rope at the time of the ABS survey. To now say that you want to hold the motions that have been on file for several months in



abeyance for several more months while you take further depositions and make additional submissions is a wholly unreasonable position. We object.

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-----Original Message-----

From: Jeff Asperger [mailto:jasperger@asplaw.net]  
Sent: Thursday, March 31, 2005 1:30 PM  
To: 'Whitman, M. Hamilton Jr.'; Robert G. Clyne; Christine Cusack;  
wcbailley@simssshowers.com; bbrunk@gulfattorneys.com;  
jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com;  
FJGorman@GandWlaw.com; James A. Saville; berniesevel@aol.com;  
jskeen@skaufflaw.com; clyon@semmes.com  
Cc: Jeff Asperger  
Subject: RE: Tate & Lyle remaining discovery

Tony, Bob and all,

Jim Skeen and I will work on the submittal. I just want to add, Bob, that we cannot agree that rulings on the motions go forward if they are impacted in any way by this additional discovery. As I read the order, it is for that very purpose that the Magistrate is allowing the additional discovery. I will look at your motion again to verify, but I believe this additional discovery may be germane to the motions.

Jeff

-----Original Message-----

From: Whitman, M. Hamilton Jr. [mailto:mhwhitman@ober.com]  
Sent: Thursday, March 31, 2005 12:07 PM  
To: Robert G. Clyne; Christine Cusack; wcbailley@simssshowers.com;  
bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com;  
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berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com  
Cc: Jeff Asperger  
Subject: RE: Tate & Lyle remaining discovery

Jeff and all:

I am in depositions all day today and will be out of town tomorrow. I will not have an opportunity to draft what needs to go to the court by the end of tomorrow and suggest that Jim Skeen or Jim Bartlett be asked to do so.

As to what is proposed, I have major commitments in the next three months, including a three week arbitration hearing in June, so I would ask that we ask for 120 days to complete the discovery. I am ok with the concept of a Balita deposition, or actually with any de bene esse deposition. I agree that we should encourage Judge Legg to decide the motions without waiting for the additional discovery.

Tony

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-----Original Message-----

From: Robert G. Clyne [mailto:RClyne@hillrivkins.com]  
Sent: Thursday, March 31, 2005 10:49 AM  
To: Christine Cusack; wcbailey@simssshowers.com;  
bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com;  
agiles@semmes.com; FJGorman@GandWlaw.com; James A. Saville;  
berniesevel@aol.com; jskeen@skaufflaw.com; Whitman, M. Hamilton Jr.;  
clyon@semmes.com  
Cc: Jeff Asperger  
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I have no objection to the additional discovery with the exception of Balita so long as it does not delay the resolution of the summary judgment motions. Balita does not factor into the magistrate's order. I would request that any motion/letter to the court make clear that the court can move forward in deciding the motions.

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-----Original Message-----

From: Christine Cusack [mailto:ccusack@asplaw.net]  
Sent: Thursday, March 31, 2005 10:13 AM  
To: wcbailey@simssshowers.com; bbrunk@gulfattorneys.com;  
jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; Robert G. Clyne; FJGorman@GandWlaw.com; James A. Saville; berniesevel@aol.com; jskeen@skaufflaw.com; 'Whitman, M. Hamilton Jr.'; clyon@semmes.com  
Cc: Jeff Asperger  
Subject: Tate & Lyle remaining discovery

Gentlemen:

This will confirm my telephone discussions with both Tony and Bob regarding the remaining discovery. We will disclose Mike Parnell as our rebuttal expert. Tony has indicated he wants to take the depo. To solve the Heiner Popp issue, Tony has offered him for depo. If discovery is extended, we intend to continue to person the depo of Balita. Unless I hear from anyone else, this summarizes our positions and I suggest we indicate that we will need 90 days to complete this work. Tony, would you be kind enough to put all this in writing, if we are in agreement? Please feel free to use our proposal in preparing your draft. Thanks.

Jeff

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